

7832--A

2013-2014 Regular Sessions

I N A S S E M B L Y

June 5, 2013

Introduced by M. of A. CUSICK -- read once and referred to the Committee on Election Law -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the election law, in relation to run-off elections in the city of New York; and providing for the repeal of such provisions upon the expiration thereof

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Legislative findings. The legislature finds and declares
2 that the effective and timely administration of local elections in the
3 city of New York is a matter of substantial state concern. In further-
4 ance of this concern, the legislature finds that it is essential to the
5 local democratic process to ensure that the board of elections in the
6 city of New York utilizes voting machines that allow for the timely and
7 orderly administration of elections. In order to modernize and update
8 the voting systems utilized in New York State, the legislature passed
9 the Election Reform and Modernization Act of 2005, which set forth
10 requirements for electronic voting systems, including optical scanning
11 voting machines, throughout the state. The implementation of these elec-
12 tronic voting systems has brought the state into conformance with
13 national standards for voting system performance and modernization. The
14 state has a substantial interest in ensuring that elections in the city
15 of New York are generally conducted with an electronic voting system
16 that meets the above mentioned statewide standards. At the same time,
17 the city of New York is uniquely situated in that a run-off primary is
18 required to be held two weeks after the local primary election in
19 certain circumstances. In recent elections administered with optical
20 scanning voting machines, approved by the state board of elections, it
21 has taken over two weeks for the board of elections in the city of New
22 York to finalize election results. A series of one-time and immediate
23 short-term changes to the current election law, as applied to the city

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

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1 of New York, are therefore necessary to further the state's substantial
2 concerns and ensure that the 4.2 million registered voters in the city
3 of New York are able to exercise their voting rights in a timely and
4 orderly primary election and run-off election, should a run-off be
5 required.

6 S 2. Section 4-114 of the election law, as amended by chapter 4 of the
7 laws of 2011, is amended to read as follows:

8 S 4-114. Determination of candidates and questions; county board of
9 elections. The county board of elections, not later than the thirty-
10 fifth day before the day of a primary or general election, or the
11 fifty-third day before a special election, shall determine the candi-
12 dates duly nominated for public office and the questions that shall
13 appear on the ballot within the jurisdiction of that board of elections.
14 PROVIDED, HOWEVER, IN ANY YEAR IN WHICH THERE HAS BEEN A RUN-OFF
15 ELECTION IN THE CITY OF NEW YORK, THE BOARD OF ELECTIONS OF SUCH CITY
16 SHALL, NOT LATER THAN THE TWENTY-EIGHTH DAY BEFORE THE GENERAL ELECTION
17 IN THAT YEAR, DETERMINE THE CANDIDATES DULY NOMINATED FOR PUBLIC OFFICE
18 AND THE QUESTIONS THAT SHALL APPEAR ON THE BALLOT WITHIN THE JURISDIC-
19 TION OF THE BOARD OF ELECTIONS OF THE CITY OF NEW YORK.

20 S 3. Subdivision 1 of section 7-200 of the election law, as amended by
21 chapter 181 of the laws of 2005, is amended to read as follows:

22 1. The board of elections of the city of New York and other county
23 boards of elections may adopt any kind of voting machine or system
24 approved by the state board of elections, or the use of which has been
25 specifically authorized by law; and thereupon such voting machine or
26 system may be used at any or all elections and shall be used at all
27 general or special elections held by such boards in such city, town or
28 village and in every contested primary election in the city of New York
29 and in every contested primary election outside the city of New York in
30 which there are one thousand or more enrolled voters qualified to vote.
31 No more than two types of voting machines or systems may be used by any
32 local board of elections at a single election. Notwithstanding the other
33 provisions of this subdivision, any local board of elections may borrow
34 or lease for use on an experimental basis for a period of not more than
35 one year each, voting machines or systems of any type approved by the
36 state board of elections.

37 (A) (I) THE BOARD OF ELECTIONS IN THE CITY OF NEW YORK SHALL DEPLOY
38 AND UTILIZE OPTICAL SCANNING VOTING MACHINES APPROVED BY THE STATE BOARD
39 OF ELECTIONS AT ALL PRIMARY ELECTIONS CONDUCTED PURSUANT TO SECTION
40 8-100 OF THIS CHAPTER.

41 (II) NOTWITHSTANDING SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE BOARD OF
42 ELECTIONS IN THE CITY OF NEW YORK IS HEREBY AUTHORIZED TO PREPARE,
43 DEPLOY AND UTILIZE MECHANICAL LEVER VOTING MACHINES AT ANY NON-FEDERAL
44 PRIMARY ELECTION, CONDUCTED PURSUANT TO SECTION 8-100 OF THIS CHAPTER.
45 THE PREPARATION, DEPLOYMENT AND UTILIZATION OF SUCH MECHANICAL LEVER
46 MACHINES SHALL ONLY OCCUR AFTER SUCH BOARD OF ELECTIONS DETERMINES THE
47 USE OF SUCH MECHANICAL LEVER MACHINES AT SUCH A NON-FEDERAL PRIMARY
48 ELECTION IS NECESSARY TO ENSURE THE TIMELY AND ORDERLY ADMINISTRATION OF
49 THE PRIMARY ELECTION, INCLUDING BUT NOT LIMITED TO A TIMELY VOTE COUNT.

50 (B) (I) THE BOARD OF ELECTIONS IN THE CITY OF NEW YORK SHALL DEPLOY
51 AND UTILIZE OPTICAL SCANNING VOTING MACHINES APPROVED BY THE STATE BOARD
52 OF ELECTIONS IN ALL RUN-OFF ELECTIONS CONDUCTED PURSUANT TO SECTION
53 8-100 OF THIS CHAPTER.

54 (II) NOTWITHSTANDING SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE BOARD OF
55 ELECTIONS IN THE CITY OF NEW YORK IS HEREBY AUTHORIZED TO PREPARE,
56 DEPLOY AND UTILIZE MECHANICAL LEVER VOTING MACHINES AT ANY RUN-OFF

1 ELECTION, CONDUCTED PURSUANT TO SECTION 8-100 OF THIS CHAPTER. THE PREP-
2 ARATION, DEPLOYMENT AND UTILIZATION OF SUCH MECHANICAL LEVER MACHINES
3 SHALL ONLY OCCUR AFTER SUCH BOARD OF ELECTIONS DETERMINES THAT THE PREP-
4 ARATION, DEPLOYMENT AND UTILIZATION OF OPTICAL SCANNING VOTING MACHINES
5 APPROVED BY THE STATE BOARD OF ELECTIONS, AT SUCH RUN-OFF ELECTION IS
6 IMPRACTICABLE GIVEN THE COSTS AND STATUTORY TIME CONSTRAINTS ASSOCIATED
7 WITH THE PREPARATION, DEPLOYMENT AND UTILIZATION OF SUCH OPTICAL SCAN-
8 NING MACHINES.

9 (C) SHOULD THE BOARD OF ELECTIONS IN THE CITY OF NEW YORK UTILIZE SUCH
10 MECHANICAL LEVER VOTING MACHINES PURSUANT TO PARAGRAPH (A) OR (B) OF
11 THIS SUBDIVISION, IN ANY PRIMARY OR RUN-OFF ELECTION, PURSUANT TO
12 SECTION 8-100 OF THIS CHAPTER, SUCH BOARD OF ELECTIONS MUST ALSO PROVIDE
13 A VOTING SYSTEM THAT MEETS THE REQUIREMENTS OF PARAGRAPHS A, B AND C OF
14 SUBDIVISION TWO OF SECTION 7-202 OF THIS TITLE IN EACH POLLING SITE.

15 S 4. Paragraph (b) of subdivision 1 of section 8-100 of the election
16 law, as added by chapter 373 of the laws of 1978, is amended to read as
17 follows:

18 (b) In the event a run-off primary election is required in the city of
19 New York, it shall be held on the [second] THIRD Tuesday next succeeding
20 the date on which the initial primary election was held.

21 S 5. Subdivision 1 of section 8-412 of the election law, as amended by
22 chapter 155 of the laws of 1994, is amended to read as follows:

23 1. The board of elections shall cause all absentee ballots received by
24 it before the close of the polls on election day and all ballots
25 contained in envelopes showing a cancellation mark of the United States
26 postal service or a foreign country's postal service, or showing a dated
27 endorsement of receipt by another agency of the United States govern-
28 ment, with a date which is ascertained to be not later than the day
29 before election and received by such board of elections not later than
30 seven days following the day of election, OR FOURTEEN DAYS FOLLOWING THE
31 DAY OF THE GENERAL ELECTION IN THE CITY OF NEW YORK IN ANY YEAR IN WHICH
32 THERE HAS BEEN A RUN-OFF ELECTION, to be cast and counted except that
33 the absentee ballot of a voter who requested such ballot by letter,
34 rather than application, shall not be counted unless a valid application
35 form, signed by such voter, is received by the board of elections with
36 such ballot.

37 S 6. Section 9-214 of the election law, the section heading and first
38 undesignated paragraph as amended by chapter 286 of the laws of 1983,
39 and the second undesignated paragraph as amended by chapter 4 of the
40 laws of 2011, is amended to read as follows:

41 S 9-214. Transmission of statements of canvassing boards to state
42 board of elections and secretary of state. The board of elections shall
43 transmit by mail or cause to be delivered personally to the state board
44 of elections, a certified copy of the statement of the canvassing board
45 relating to the offices of electors of president and vice-president of
46 the United States, United States senator, representatives in congress
47 and state offices, including members of the state senate and assembly,
48 and to the votes cast on any ballot proposal submitted to all the voters
49 of the state, within twenty-five days after the election. If any certi-
50 fied copy shall not be received by the state board on or before the
51 twenty-fifth day following a general election, or a special election, it
52 shall dispatch a special messenger to obtain such certified copy, and
53 the board of elections, immediately upon demand of such messenger at its
54 office, shall make and deliver a certified copy to such messenger who
55 shall deliver it forthwith to the state board.

1 The board of elections shall transmit to the secretary of state within
2 twenty-five days after a general election, and within twenty days after
3 a special election, a list of the names and residences of all persons
4 determined by the canvassing board to be elected to any county office.
5 NOTWITHSTANDING THE FOREGOING PROVISIONS OF THIS SECTION, IN ANY YEAR IN
6 WHICH THERE HAS BEEN A RUN-OFF ELECTION IN THE CITY OF NEW YORK, THE
7 BOARD OF ELECTIONS IN THE CITY OF NEW YORK SHALL TRANSMIT TO THE SECRE-
8 TARY OF STATE NOT LATER THAN THIRTY DAYS AFTER THE GENERAL ELECTION IN
9 THAT YEAR A LIST OF THE NAMES AND RESIDENCES OF ALL PERSONS DETERMINED
10 BY THE CANVASSING BOARD TO BE ELECTED TO ANY COUNTY OFFICE.

11 The board of elections shall transmit to the state board, on or before
12 the tenth day of December following an election for governor, a certi-
13 fied tabulated statement, by election districts, of the official canvass
14 of the votes cast for candidates for governor, to include, in the case
15 of a candidate who was nominated by two or more parties or independent
16 bodies, a separate statement of the number of votes cast for him as the
17 candidate of each party or independent body by which he was nominated
18 and if the county contains more than one assembly district or parts of
19 more than one assembly district, a statement of the number of votes cast
20 for governor by assembly district.

21 S 7. Paragraph (a) of subdivision 1 of section 10-108 of the election
22 law, as amended by chapter 4 of the laws of 2011, is amended to read as
23 follows:

24 (a) Ballots for military voters shall be mailed or otherwise distrib-
25 uted by the board of elections, in accordance with the preferred method
26 of transmission designated by the voter pursuant to section 10-107 of
27 this article, as soon as practicable but in any event not later than
28 thirty-two days before a primary or general election; twenty-five days
29 before a New York city community school board district or city of
30 Buffalo school district election; fourteen days before a village
31 election conducted by the board of elections; and forty-five days before
32 a special election. NOTWITHSTANDING THE FOREGOING PROVISIONS OF THIS
33 SECTION, IN ANY YEAR IN WHICH THERE HAS BEEN A RUN-OFF ELECTION IN THE
34 CITY OF NEW YORK, BALLOTS FOR MILITARY VOTERS SHALL BE MAILED OR OTHER-
35 WISE DISTRIBUTED BY THE BOARD OF ELECTIONS OF SUCH CITY IN ACCORDANCE
36 WITH THE PREFERRED METHOD OF TRANSMISSION DESIGNATED BY THE VOTER PURSU-
37 ANT TO SECTION 10-107 OF THIS ARTICLE, AS SOON AS PRACTICABLE BUT IN ANY
38 EVENT NOT LATER THAN TWENTY-FIVE DAYS BEFORE A GENERAL ELECTION IN THAT
39 YEAR. A voter who submits a military ballot application shall be enti-
40 tled to a military ballot thereafter for each subsequent election
41 through and including the next two regularly scheduled general elections
42 held in even numbered years, including any run-offs which may occur;
43 provided, however, such application shall not be valid for any election
44 held within seven days after its receipt. Ballots shall also be mailed
45 to any qualified military voter who is already registered and who
46 requests such military ballot from such board of elections in a letter,
47 which is signed by the voter and received by the board of elections not
48 later than the seventh day before the election for which the ballot is
49 requested and which states the address where the voter is registered and
50 the address to which the ballot is to be mailed. The board of elections
51 shall enclose with such ballot a form of application for military
52 ballot. In the case of a primary election, the board shall deliver only
53 the ballot of the party with which the military voter is enrolled
54 according to the military voter's registration records. In the event a
55 primary election is uncontested in the military voter's election
56 district for all offices or positions except the party position of

1 member of the ward, town, city or county committee, no ballot shall be
2 delivered to such military voter for such election; and the military
3 voter shall be advised of the reason why he or she will not receive a
4 ballot.

5 S 8. Subdivision 1 of section 10-114 of the election law, as amended
6 by chapter 165 of the laws of 2009, is amended to read as follows:

7 1. The board of elections shall cause all military ballots received by
8 it before the close of the polls on election day and all ballots
9 contained in envelopes showing a cancellation mark of the United States
10 postal service or a foreign country's postal service, or showing a dated
11 endorsement of receipt by another agency of the United States government
12 or are signed and dated by the voter and one witness thereto, with a
13 date which is ascertained to be not later than the day before election
14 and received by such board of elections not later than seven days
15 following the day of a primary election and not later than thirteen days
16 following the day of a general or special election to be cast and count-
17 ed. NOTWITHSTANDING THE FOREGOING PROVISIONS OF THIS SECTION, IN ANY
18 YEAR IN WHICH THERE HAS BEEN A RUN-OFF ELECTION IN THE CITY OF NEW YORK,
19 THE BOARD OF ELECTIONS OF SUCH CITY SHALL CAUSE ALL MILITARY BALLOTS
20 RECEIVED BY IT BEFORE THE CLOSE OF THE POLLS ON ELECTION DAY AND ALL
21 BALLOTS CONTAINED IN ENVELOPES SHOWING A CANCELLATION MARK OF THE UNITED
22 STATES POSTAL SERVICE OR FOREIGN COUNTRY'S POSTAL SERVICE, OR SHOWING A
23 DATED ENDORSEMENT OF RECEIPT BY ANOTHER AGENCY OF THE UNITED STATES
24 GOVERNMENT OR ARE SIGNED AND DATED BY THE VOTER AND ONE WITNESS THERETO,
25 WITH A DATE WHICH IS ASCERTAINED TO BE NOT LATER THAN THE DAY BEFORE
26 ELECTION DAY AND RECEIVED BY SUCH BOARD OF ELECTIONS NOT LATER THAN
27 TWENTY DAYS FOLLOWING THE DAY OF A GENERAL ELECTION IN THAT YEAR TO BE
28 CAST AND COUNTED.

29 S 9. The amendments to the election law set forth in this act shall
30 apply notwithstanding any other provision of general, special or local
31 law, including but not limited to any provision of law that would render
32 the preparation, deployment and utilization of mechanical lever voting
33 machines impracticable where the board of elections in the city of New
34 York makes a determination with respect to such machines as authorized
35 by subdivision 1 of section 7-200 of the election law as amended by
36 section three of this act.

37 S 10. On or before July 1, 2014, the board of elections in the city
38 of New York shall submit a report to the governor, temporary president
39 of the senate, speaker of the assembly, minority leader of the senate,
40 minority leader of the assembly, chair of the senate standing committee
41 on elections, chair of the assembly standing committee on election law,
42 mayor of the city of New York, and speaker of the New York city council,
43 detailing a plan for administering effective and timely elections in the
44 city of New York with a voting machine system that meets the require-
45 ments of title 2 of article 7 of the election law and without the use of
46 mechanical lever machines. Such plan shall address, at a minimum, train-
47 ing of board of elections staff, including poll clerks and election
48 inspectors in connection with the preparation, testing, deployment and
49 utilization of optical scanning voting machines approved by the state
50 board of elections, including further education and training regarding
51 the needs of voters with disabilities, appropriate and effective methods
52 for streamlining election night canvassing procedures, and appropriate
53 and effective methods of ensuring full and fair voting machine access
54 for all voters.

55 S 11. The board of elections in the city of New York shall adopt
56 procedures regarding the preparation, deployment and utilization of

1 mechanical lever voting machines should such board of elections deter-
2 mine under section three of this act that such lever voting machines
3 shall be used. Such procedures shall seek to ensure that the canvass and
4 recanvass of the mechanical lever voting machines occurs in a timely and
5 efficient manner.

6 S 12. This act shall take effect immediately and shall expire and be
7 deemed repealed December 31, 2013, except that section ten of this act
8 shall expire and be deemed repealed August 1, 2014.